

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:21-cv-00161-GCM  
(3:93-cr-00215-GCM-6)**

**CARLOS EMANUEL KINARD,** )  
 )  
 **Petitioner,** )  
 )  
 **vs.** )  
 )  
 **UNITED STATES OF AMERICA,** )  
 )  
 **Respondent.** )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER** is before the Court on Petitioner’s Motion to Extend Time to File Notice of Appeal. [Doc. 11].

On April 13, 2021, Petitioner Carlos Emanuel Kinard (“Petitioner”) filed a Pro Se Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255. [Doc. 1]. On November 2, 2021, the Court granted the Government’s motion to dismiss the petition and judgment was entered. [Docs. 9, 10]. The Clerk mailed Petitioner a copy of the Order and Judgment the same day [see 11/2/2021 Docket Entries] and the Clerk’s mail transmitting these documents has not been returned. Thus, Petitioner had until December 2, 2021 to file a notice of appeal. See Fed. R. App. 4(a)(1)(A), 26(a)(1).

On March 4, 2022, the Court received the instant motion, dated February 23, 2022 by Petitioner, in which Petitioner asks the Court to reopen the time to file an appeal pursuant to Federal Rule of Appellate Procedure 4(a)(6). [See Doc. 11 at 2-3]. He submits his affidavit therewith. [Doc. 11-1]. Petitioner attests that, “the district court did not provide [him] with a notice of the denial” of his motion to vacate. Petitioner also attests that he was unable to access the electronic law library at his facility “[f]rom early January 2022 to the second week in

February 2022” due to institutional lockdowns. [Doc. 11-1 at ¶¶ 2-4].

Because Petitioner’s claim that he did not receive the Order and Judgment from the Court conflicts with the Court’s record, the Court will order the Government to obtain mail log records from Petitioner’s correctional institution for the relevant period to inform the Court’s determination here. That is, the Court will order the Government to obtain any and all records and/or testimony from the Bureau of Prisons showing the details of Petitioner’s receipt of mail from this Court, particularly for the three-week period beginning on November 3, 2021 and ending on November 24, 2021, if any. Once the Court has this information, it will determine from the whole of the record whether Petitioner is entitled to the relief he now seeks.

**IT IS, THEREFORE, ORDERED** that, within 21 days of this Order, the Government shall obtain any and all records and/or testimony from the Bureau of Prisons showing the details of Petitioner’s receipt of mail from this Court for the three-week period beginning on November 3, 2021 and ending on November 24, 2021, if any.

Signed: March 9, 2022

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

